

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REGINALD L. MCCOY,

Petitioner,

v.

B.M. TRATE,

Respondent.

Case No. 1:22-cv-00031-HBK (HC)

ORDER DENYING PETITIONER'S MOTION
FOR STATUS CONFERENCE

(Doc. No. 5)

ORDER FINDING PETITIONER'S MOTION
TO VACATE CONSTRUED MOTION FOR
CLERK'S DEFAULT MOOT

(Doc. No. 19)

ORDER DENYING PETITIONER'S MOTION
TO COMPEL

(Doc. No. 21)

Pending before the Court are Petitioner's request for status conference, motion to vacate an erroneously mischaracterized motion for clerk's default, and motion to compel discovery. (Doc. Nos. 5, 19, 21). Petitioner, who is *pro se*, has pending a petition for writ of habeas corpus under 28 U.S.C. § 2241. (Doc. No. 1).

On March 24, 2022, Petitioner filed a "request for judgment in Petitioner's favor as a matter of law." (Doc. No. 15). On April 13, 2022, the Court construed Petitioner's request as a motion for a clerk's default, and denied the motion. (Doc. No. 17). Petitioner asks the Court to vacate his motion because the Court "mischaracterized" the motion as a motion for clerk's default

1 because he is “in good faith, seeking habeas release not by default judgment or clerk’s default,
2 but by law. And [sic] constitution.” (Doc. No. 19 at 3). Because the Court denied Petitioner’s
3 construed motion for a clerk’s default, Petitioner’s motion to vacate his construed motion is
4 denied as moot. The Court does not attribute any bad faith to Petitioner for filing the motion.

5 Petitioner additionally renews his contention that Respondent has failed to provide him
6 “with fair notice of [sic] it’s reason for dismissal request” because he had not received any filings
7 by Respondent. (*Id.*). As indicated herein, Respondent is directed to file a notice with the Court,
8 with supporting exhibits, of either (1) re-service of the motion to dismiss or (2) verification from
9 the prison mail log that Petitioner received a copy of the response, and the date the response was
10 received.

11 Petitioner also filed a motion for status conference, and a motion to compel discovery,
12 including the forensic lab report, his indictment, trial transcripts including jury instructions,
13 sentencing documents, depositions, and prison medical records. (Doc. Nos. 5, 21). Although
14 discovery is available pursuant to Rule 6 of the Rules Governing Section 2254 cases,¹ it is granted
15 only at the Court’s discretion, and upon a showing of good cause. *Bracy v. Gramley*, 520 U.S.
16 899, 904 (1997)(“Parties in habeas cases, unlike those in ordinary civil cases, have no right to
17 discovery.”); *Jones v. Wood*, 114 F.3d 1002, 1009 (9th Cir. 1997). Respondent’s motion to
18 dismiss for lack of jurisdiction is currently pending before the Court; thus, Petitioner’s motion to
19 compel will be denied without prejudice as premature. (Doc. Nos. 12). In the event Respondent
20 is ordered to respond to the petition, Petitioner may renew his motion upon a showing of good
21 cause once the matter is fully briefed. Similarly, if the Court determines that a status conference
22 is warranted after reviewing the completed briefing, it will schedule one at that time. *See* Rules
23 Governing Section 2254 Cases, R. 8(a).

24 Accordingly, it is **ORDERED**:

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26 ¹ The Rules Governing Section 2254 Cases may be applied to petitions for writ of habeas corpus other than
27 those brought under § 2254 at the Court’s discretion. *See* Rule 1 of the Rules Governing Section 2254
28 Cases. Civil Rule 81(a)(2) provides that the rules are “applicable to proceedings for . . . habeas corpus . . .
to the extent that the practice in such proceedings is not set forth in statutes of the United States and has
heretofore conformed to the practice of civil actions.” Fed. R. Civ. P 81(a)(2).

1. Petitioner's motion for status conference (Doc. No. 5) is DENIED.
2. Petitioner's motion to vacate erroneously mischaracterized motion for clerk's default (Doc. No. 19) is DENIED as moot.
3. Petitioner's motion to compel discovery (Doc. No. 21) is DENIED.
4. **Within fourteen days** of this Order, Respondent shall file with the Court either (1) notice of re-service of the March 8, 2022 motion to dismiss, or (2) notice verifying the date that Petitioner received a copy of the response as supported by the prison mail log or other evidence of delivery. **Plaintiff's opposition to the motion to dismiss must be filed within twenty-one (21) days of receipt of the re-served motion to dismiss or notice verifying earlier service.**

Dated: May 10, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE